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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,019	08/04/2003	Kirk W. Watkins	P150 1031.1	5806
26158	7590	03/15/2005		EXAMINER
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC P.O. BOX 7037 ATLANTA, GA 30357-0037			MAUST, TIMOTHY LEWIS	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/634,019	WATKINS, KIRK W. <i>ED</i>
	Examiner Timothy L Maust	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 August 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4,6-21,23-25 and 29-32 is/are rejected.
 7) Claim(s) 5,22 and 26- 28 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 04 August 2003 and 27 October 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/29/03 & 12/30/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings filed on 8/4/03 and 10/27/04 are informal, since the letters, numbers and lines are not uniform in nature throughout Figures 7A-9C, 16 and 17.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 7-17, 19-29, 43 and 44 of copending Application No. 10/609177. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application claims define an apparatus that anticipates the now claimed subject matter. Examiner takes Official Notice that anticipation falls well within the definition and scope of obviousness. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have claims drawn

to the now claimed subject matter in view of Examiner's Noted fact. Furthermore, Applicant's attention is directed to *In re Goodman* cited above in support of Examiner's position.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6-8, 11-20 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Simdon et al.

In regard to claims 1, 6-8 and 18-20, the Simdon et al. reference discloses a "fuel intake device" 10 (see Fig. 1) comprising a removable "cylindrical body portion" 202 (Fig. 2A) that contains a pivotally mounted "housing" 100 moveable between an "open" and "closed" position and a "fuel intake passage" 110 to receive a fuel nozzle therein, as claimed.

In regard to claims 11 and 12, the "body" is plastic (see col. 5, lines 26-29).

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In regard to claim 13, inasmuch structure that is defined by a “cover”, exterior trim plate 144 meets the claimed limitation. Trim plate 144 is attached to the vehicle via the housing.

In regard to claims 14 and 15, see column 3, line 54 through column 4, line 2.

In regard to claim 16, inasmuch structure that is defined by a “lock”, stud members 145 meet the claimed limitation, since they “lock” plate 144 onto the housing.

In regard to claim 17, pipe 20 is attached to the vehicle fuel tank.

In regard to claim 30, the “body” 202 is capable of receiving gaskets.

In regard to claims 31 and 32, the method as claimed would be inherent during normal use and operation of the device.

Claims 1-4, 6-15, 17-21, 23-25 and 29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Levey et al.

In regard to claims 1, 6-8, 17-20 the Levey et al. reference discloses a “fuel intake device” 10 (see Fig. 1) comprising a removable “cylindrical body portion” 40 that contains a pivotally mounted “housing” 60 moveable between an “open” and “closed” position and a “fuel intake passage” 46 (see Figure 6) to receive a fuel nozzle therein, as claimed. Further, the Webster’s Universal Unabridged Dictionary defines “housing” as “anything that covers or protects”, which is the function of element 60.

In regard to claims 2-4, 21 and 23-25, valve 30 acts as a “pressurization”/“depressurization” valve (see col. 4, lines 11-18).

In regard to claims 9-12, see column 3, lines 48-52.

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In regard to claims 13-15, see "cover" 48 in Figures 1 and 2.

In regard to claim 29, the device replaces a common fuel cap that threads into the fuel pipe (see col. 4, lines 9 and 10).

In regard to claim 30, the "body" 40 is capable of receiving gaskets.

In regard to claims 31 and 32, the method as claimed would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simdon et al.

Simdon et al. disclose the invention as claimed (discussed *supra*), but do not disclose the body being made of aluminum. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the device of aluminum (well known in the fuel pipe inlet art), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levey et al. in view of Benoist.

Levey et al. disclose the invention as claimed (discussed *supra*), but do not disclose the “cover” having a lock. However, the Benoist reference discloses another fuel filler apparatus having a “lock” 53 to prevent unauthorized access. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Levey et al. device to include a lock on the cover in view of the Benoist reference in order to prevent unauthorized access.

Allowable Subject Matter

Claims 5, 22 and 26-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Timothy L Maust
Primary Examiner
Art Unit 3751

Tlm
3/9/05